the bond having taken its place should be similarly unaffected. Where, however, the attachment is levied within four months prior to the filing of the petition in bankruptcy, the attachment is automatically rendered void by the adjudication. Should not therefore the bond which takes the place of the attachment be similarly rendered void?

Many federal and the majority of the state courts so hold, and the view is supported by strong considerations.[7] The purpose of an attachment bond is to release the attached property, which property is to be returned in the event of a judgment against the defendants. What is sought to be gained by the attachment bond is security equal in value to the lien on the attached property. If that lien through subsequent bankruptcy is voided and rendered valueless, should not the attachment bond also fall?

In California[8] a different rule obtains, as is evidenced by the principal case[9] holding it immaterial that the attachment lien was created within four months prior to the bankruptcy proceedings. This rule is based on the argument that the attachment having been dissolved before the bankruptcy proceedings were begun, there was no attachment upon which the bankruptcy proceedings could operate, and the attachment bond being supported by a good consideration, is unaffected by the adjudication of bankruptcy and is therefore binding upon the sureties.

It may be worthy of note that the court in its opinion cited section 67c of the Bankruptcy Act, instead of section 67f, and was perhaps influenced in its decision by this section.

A. I. D.

CONSTITUTIONAL LAW: ACTIONS TO DETERMINE TITLE: NOTICE.—In ordinary actions notice and an opportunity to be heard are essential to due process of law within the meaning of the constitutional provision, "nor shall any State deprive any person of property, without due process of law."[1] But there are different forms of notice, and such forms are of varying degrees of effectiveness. Notice may be actual or constructive; constructive

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[7] Collier, Bankruptcy (5th ed.), pp. 199, 200; Brandenburg, Bankruptcy, § 415; Klipstein & Co. v. Allen-Miles Co. (1905), 136 Fed. 385; Stull v. Beddeo (1907), 78 Neb. 119, 112 N. W. 315; Crook Horner Co. v. Gilpin (1910), 112 Md. 1, 75 Atl. 1049; Windisch-Mulhauser Brewing Co. v. Simms (1911), 129 La. 134, 55 So. 739.

[8] Rosenthal v. Perkins (1898), 123 Cal. 240, 55 Pac. 804; S. F. Sulphur Co. v. Aetna Indem. Co. (1909), 11 Cal. App. 695, 106 Pac. 111; cf. also McCombs v. Allen (1880), 82 N. Y. 114; King v. Will J. Block Amusement Co. (1908), 126 App. Div. 48, 111 N. Y. Supp. 102.

[9] Supra, n. 4.

[1] U. S. Const., Amend. XIV; Ballard v. Hunter (1907), 204 U. S. 241, 51 L. Ed. 461, 27 Sup. Ct. Rep. 261; Ochoa v. Hernandez y Morales (1913), 230 U. S. 139, 57 L. Ed. 1427, 33 Sup. Ct. Rep. 1033; Simon v. Craft (1901), 182 U. S. 427, 45 L. Ed. 1165, 21 Sup. Ct. Rep. 836.

notice may arise from such matters as attachment or adverse possession of property, publication and recordation.

In actions to determine title the sufficiency of any given form of notice depends upon two considerations: on the one hand, the due process clause was not intended to hamper the state unduly in its determination of the title to property within its jurisdiction;[2] on the other hand, the fundamental principles of justice embodied in this clause require that the property owner be given as much protection as is consistent with the state's being able to determine property titles with reasonable facility. It would seem, therefore, that the most effective form of notice practicable should be employed, but in *O'Neil v. Northern Colorado Irrigation Co.*[3] the United States Supreme Court apparently takes the position that the notice which a property owner receives from the mere recording of a judgment is sufficient under the due process clause, irrespective of whether more effective forms of notice were readily available. This case arose in Colorado. It was an action to determine whether the plaintiff's water right, having a priority subsequent to January 18, 1879, was prior to a water right belonging to the defendant. The defendant claimed that a decision which he had obtained some twenty years before, in an action to which the present plaintiff was not a party, to the effect that the present defendant's water right had a priority of the date of January 18, 1879, was conclusive upon this plaintiff under a state statute providing that judicial decrees determining water rights and their priorities should be conclusive as to *all* persons unless contested within four years. In an opinion written by Mr. Justice Holmes the Supreme Court sustained the defendant's contention, without considering whether more effective means of giving notice than those taken in the former action brought by the present defendant were practicable, merely saying, "there was nothing to hinder the state from providing that if he [the present plaintiff] took no steps to assert his rights within a reasonable time after the judicial assertion of an adverse title, the decree being a public fact, he should lose his rights."

It is interesting to note that in an earlier opinion, written while he was Chief Justice of the Massachusetts Supreme Court, Mr. Justice Holmes favors a similar freedom in the construction of the words "due process of law;" he there says, "a proceeding *in rem* may be instituted and carried to judgment without personal service upon claimants within the state, or notice by name to those outside of it, and not encounter any provision" of the United States Constitution; and that as regards notice "the immediate recording

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[2] Cunnius v. Reading School District (1905), 198 U. S. 458, 49 L. Ed. 1125, 25 Sup. Ct. Rep. 721; Jacobs v. Roberts (1912), 223 U. S. 261, 56 L. Ed. 429, 32 Sup. Ct. Rep. 303.

[3] (Nov. 20, 1916), 242 U. S. 20, 37 Sup. Ct. Rep. 7.

of the claim is entitled to equal effect from a constitutional point of view" with a seizure of the property.[4] But it is hard, nevertheless, to reach any other conclusion than that to allow a person to be deprived of property with no notice, other than that to be derived from the mere recording of a judgment, when there are other more effective practicable ways of giving him notice, works an injustice which the due process clause was intended to prevent.[5]

R. E. H.

DEEDS: SUFFICIENCY OF DELIVERY WHEN DELIVERED TO TAKE EFFECT UPON DEATH.—It is well settled in the United States that a deed delivered to a third person for delivery after the grantor's death is valid, if the grantor retains no control over it.[1] But this conclusion is reached by two different theories and often we find both theories advanced in the same jurisdiction, the court at one time holding that the title passes to the grantee at the moment of delivery by the grantor to the depositary, and at another time that title does not pass until the second delivery, and then by the fiction of relation back, it is deemed to have passed at the time of the first delivery.[2] Where the contest is between the grantee and the heirs of the grantor, it makes practically no difference which theory is accepted, for the only real question is whether the grantee has the title—how and when he got it is of little importance. But where creditors, or persons claiming rights derived from the grantor between the first and second delivery come in, it is important to determine under what theory the grantee acquires title.[3]

The better theory was accepted in the case of *Smith v. Smith*,[4] where the grantor wrote to his attorney: "I herewith deliver to you two deeds, one to each of my sons, N. D. Smith and G. C. Smith, and direct that you keep and hold the same in escrow during my lifetime, and upon my death deliver them to N. D. Smith and G. C. Smith so that they may then take effect." The court held that the title to the property vested immediately in the

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[4] Tyler v. Judges of the Court of Registration (1900), 175 Mass. 71, 55 N. E. 812, 51 L. R. A. 433.

[5] Bear Lake County v. Budge (1904), 9 Idaho 703, 75 Pac. 614; State v. Guilbert (1897), 56 Ohio St. 575, 47 N. E. 551, 60 Am. St. Rep. 756.

[1] If the grantor retains control over such instrument it is testamentary, because not until his death is it intended to be operative; and being in substance a will, it must fail of effect if it does not satisfy the statutory requirements of a will. Doe v. Bennett (1837), 8 Car. & P. 124, 34 Eng. C. L. 322; Hayden v. Collins (1905), 1 Cal. App. 259, 81 Pac. 1120; Tennant v. John Tennant Memorial Home (1914), 167 Cal. 570, 140 Pac. 242; Wellborn v. Weaver (1855), 17 Ga. 267, 63 Am. Dec. 235; Stinson v. Anderson (1880), 96 Ill. 373; Wilson v. Carrico (1895), 140 Ind. 533, 40 N. E. 50, 49 Am. St. Rep. 213, and note; 1 Cornell Law Quarterly 100.

[2] 26 Harvard Law Review 579, n. 39.

[3] Wittenbrock v. Cass (1895), 110 Cal. 1, 42 Pac. 300.

[4] (Nov. 29, 1916), 52 Cal. Dec. 595, 161 Pac. 495.